extreme step. It would have been an intolerable imposition to place on occupiers to require them to do so. Every word uttered by Lord Dunedin, cited earlier from *Addie's* case, applies with equal force to the facts of the present case.

The plaintiff's claim must therefore be dismissed with costs.

Claim dismissed.

Solicitors: *Braddell Bros.; J. Y. P. Chia & Co.*

PUBLIC PROSECUTOR v. OMAR LOPEZ

[A.Cr.J. (Williams J.) August 27, 1966]

[Kuching — Criminal Appeal No. K. 8 of 1966]

Criminal Law and Procedure — Submission of no case to answer — Test to be applied — Criminal Procedure Code (Sarawak Cap. 58), ss. 163 & 181.

At the close of the prosecution upon submission being made a magistrate must ask himself not whether he is satisfied that the prosecution has proved the case beyond reasonable doubt but whether there is evidence which if believed by reasonable men — it follows that it must be capable of such belief — would justify such men in convicting the accused of the offence charged. If he comes to the conclusion that there is no such evidence then he may acquit. If, however, he considers that such evidence does exist he should rule that there is a case to answer. It is then a matter for the accused, or his counsel, to decide what to do. He may say nothing and rest upon the submission, or he may make an unsworn statement, or give evidence on oath and call witnessess in the normal way. In any of the above events it will then fall to the magistrate to consider the total of the evidence that is then before him and applying the normal test that is applied in a criminal prosecution decide to his own satisfaction the guilt of the accused.

In this case the learned magistrate has applied the wrong test and the acquittal of the respondent cannot stand. Re-trial ordered.

Cases referred to:—

(1) *Practice Note* [1962] 1 All E.R. 448.

(2) *Woolmington* v. *Director of Public Prosecution* [1935] A.C. 462 & 480.

MAGISTRATE'S CRIMINAL APPEAL.

C. J. Millar (Deputy Public Prosecutor) for the appellant.

S. K. Reddi for the respondent.

Williams J.: This is an appeal by the public prosecutor against the acquittal of the respondent by the stipendiary magistrate at Kuching. The respondent stood charged with three offences under section 7(B) of the Anti-Corruption Ordinance, 1959. At the close of the case for the prosecution, Mr. Reddi, who appeared on behalf of the respondent, submitted that there was no case to answer, i.e. that the prosecution had failed to establish a *prima facie* case. The learned magistrate after an adjournment to consider the evidence gave a long and somewhat involved ruling. In giving this ruling he applied his mind to the test that the prosecution must pause at this particular stage of a criminal case. No precise terminology was used by the learned magistrate but from reading his ruling as a whole I think it quite clear that what he meant was that it is necessary for the prosecution to have satisfied the trial magistrate that at that stage it has proved the guilt of the respondent beyond reasonable doubt.

In the course of the appeal, Mr. Millar, who appeared for the public prosecutor, argued that the test applied was incorrect. He said that the true test was of the nature laid down by Lord Parker C.J. in the *Practice Note.*(1) Mr. Reddi pointed to authority in Malaya which supported the attitude taken by the learned magistrate in this instance. There is indeed a considerable body of case law on this particular topic but I think the answer must lie in the specific language of the relevant Code, in this case the Criminal Procedure Code, Cap. 58 of the Laws of Sarawak. The relevant section of that Code is section 163 which reads as follows:—

"If upon taking all the evidence referred to in section 162 and asking such question, if any of the accused under section 201 as the court considers necessary it finds that no evidence has been adduced which, if believed would warrant his conviction, the court, may, subject to the provisions of section 171, record an order of acquittal."

I think it appropriate to mention here that section 163 took its present form by an amendment made in 1962. Prior to that time it had followed the provisions of section 253 of the Indian Criminal Procedure Code more closely even to the extent of incorporating the formidable word "rebutted". It is too perhaps worth remembering that the section in the Indian Code was pertinent only to the trial of "warrant cases" by magistrates wherein a procedure very different from that known in Sarawak was followed; and here, if I may add, I think much of the difficulty lies, especially that of reading section 164 with section 163 of the Sarawak Criminal Procedure Code. I would further note that the Indian Code provided a very different test where there was a trial with assessors, see section 289(2) of that Code. Be that as it may section 163 as it now stands clearly brings the law in Sarawak much more into line with that set out in the "Practice Note" referred to above.

I think however that the position becomes much clearer as to what is meant by 'no case to answer' when one looks at a trial which involves the use of a jury. For a judge at the close of the case for the prosecution in such instance to say that the prosecution has proved the guilt of the accused beyond reasonable doubt would be tantamount to his being enabled to say that the jury must in law find the person

guilty and so make him decide the case. That cannot be the law (see: Viscount Sankey L.C. in *Woolmington* v. *Director of Public Prosecution.*[2] All that is required there is for the judge to apply the test, is there evidence upon which the jury might find the accused guilty.

It might be argued that the position is different where a judge is a judge both of law and fact. However, the same test must be applied in each instance in Sarawak as is clear from the provisions of section 181 of the Criminal Procedure Code. It is of course to be noted that Sarawak has no trial by jury only by assessors. Assessors do not have the powers and duties of a jury. But nevertheless they do have a vital part to play in criminal trials. It follows, therefore, that it behoves the magistrate to apply the same test as would a judge with assessors. The position then is that at the close of the prosecution upon submission being made a magistrate must ask himself not whether he is satisned that the prosecution has proved the case beyond reasonable doubt but whether there is evidence which if believed by reasonable men — it follows that it must be capable of such belief — would justify such men in convicting the accused of the offence charged. If he comes to the conclusion that there is no such evidence then he may acquit. If, however, he considers that such evidence does exist he should rule that there is a case to answer. It is then a matter for the accused, or his counsel, to decide what to do. He may say nothing and rest upon the submision, or he may make an unsworn statement, or give evidence on oath and call witnesses in the normal way. In any of the above events it will then fall to the magistrate to consider the total of the evidence that is then before him and applying the normal test that is applied in a criminal prosecution decide to his own satisfaction the guilt of the accused.

If such a test as I have indicated above had been applied by the learned magistrate, he may well have ruled that there was a case to answer but there are so many other points raised by the ruling upon which I have not been addressed either by the prosecution or counsel for the respondent that I am not prepared to comment with any degree of certainty. But had he done so I again cannot say what course Mr. Reddi would have adopted. It may have been the first of the three courses which I have mentioned and it may very well have been that at that stage the learned magistrate would have acquitted the respondent.

In the event, however, the learned magistrate has applied the wrong test and the acquittal of the respondent cannot stand. I therefore, though with considerable reluctance, order a re-trial of this case upon the three charges as originally preferred by the prosecution. Whether the prosecution, having received a ruling which it set out to achieve, considers this a proper case to pursue is a matter which I will not comment upon as I think it would be improper for me to do so.

Re-trial ordered.

RE FRASER & NEAVE LTD. TAN KENG SIONG v. TAN HOCK KIANG & ORS.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) September 4, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 29 of 1967]

Companies — Shares — Transfer of — Refusal of directors to register — Compliance with provisions laid down in articles of association in regard to transfer — Usual or common form of sharetransfer in use in Singapore — Requirements for valid gift — Companies Ordinance (Cap. 174), ss. 65(1) & 101.

A husband the registered holder of $5,000 ordinary stock in the company gave to his wife his share certificate together with a transfer form signed by him but was not attested by a witness. The form was undated and the consideration was not stated. Some years later the wife affixed her signature to the transfer form which was duly attested, and after causing the transfer to be dated and stamped sent it together with the certificate to the company for registration. The company refused to register the transfer because the signature of the husband had not been attested. The wife made no attempt to remedy the omission because of strained relationship with her husband. Instead, she applied by originating motion to the High Court for an order to rectify the register of members of the company by removing the name of the husband therefrom and inserting therein her name in substitution as the holder of the stock. The learned judge who heard the application in granting the same held that the articles of association of the company contained no mandatory requirement with regard to the form of instrument of transfer and the husband being presumed to make a gift had done all he could do to divest himself of the ownership of the stock and to vest it in his wife. On appeal,

Held: (1) it is settled law that a shareholder who desires to transfer his shares must comply with provisions relating to transfer laid down in the articles of association. The usual or common form of transfer requires the transferor's signature to be attested and this was the correct interpretation of the relevant article of association of the company in this case;

(2) assuming the husband intended to make a gift of the stock it was nevertheless an incomplete gift according to law because he failed to do everything required to transfer effectually the stock from himself to his wife and the learned judge erred in deciding that the husband had done all he could do to divest himself of ownership and vest it in the wife.

Case referred to:—

(1) *Re Williams* [1917] 1 Ch. 1.

FEDERAL COURT.

G. S. Hill for the appellant.

A. S. K. Wee for the 1st respondent.

M. Karthigesu for the 2nd respondents.